IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 450 OF 2005

Ramchandra Maruti Waghmare ... Appellant (Ori. Defendant)

V/s

Laxman Maruti Waghmare ... Respondent (Ori.Plaintiff)

Mr.A.K. Suryawanshi for the appellant.

Mr. S.M. Mirajkar holding for G.S.Godbole for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 6TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the District Judge, Solapur on 4.8.2004 dismissing the R.C.A. No. 267 of 2003 and allowing R.C.A. No. 301 and partly confirming the judgment and order passed by the Civil Judge, Jr.Divn., Solapur, dated 30.7.2003 confirming the direction that defendant shall hand over peaceful possession of municipal House No. 156/A to the plaintiff and recorded the findings of the Trial Court directing that possession of House No.156 shall also be handed over to

the plaintiff.

2. I have heard the learned counsel for the appellant and the respondent. Perused the record.

3. The plaintiff had filed the suit for recovery of possession with mesne profits of both the house properties of House Nos. 156 and 156-A situated at Village Kumathe. The parties are brothers of each other. Defendant was the owner of eastern side portion admeasuring East-West 28 ft. and South-North 35 ft. suit of municipal house No.156-A. On 27.12.1967, plaintiff had purchased it from defendant for Rs.900/- by registered sale deed. Plaintiff further had purchased municipal house No.156 admeasuring East-West 24 hands and South-North 6 hands, at Village Kumathe on 9.5.1961 for Rs.100/- from his cousin Shankar Mahadeo Waghmare. He had paid all the Grampanchayat and the municipal taxes since the purchase of the suit properties. Defendant was his brother. He was in service in Army. After retirement from the service in Northcot Solapur at Solapur, he was in need of house for residence and, therefore, plaintiff allowed him to occupy the suit properties for use and occupation, however, taking disadvantage of illiteracy of plaintiff,

defendant applied to the tax assessment and collection section, municipal Corporation and Taluka Inspector of Land Records, Solapur and requested to record his name to the suit properties, at which time the plaintiff came to know about the ill motive of the defendant and hence filed the suit.

The defendant contested the suit denying all the allegations made by the plaintiff and submitted that he has purchased the suit proeprty on 11.6.1966 from his cousin Shankar Mahadeo Waghmare and since then he is owner of the suit property.

The learned Trial Judge on the basis of available evidence on record, adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that municipal House No. 156/A only belongs to the plaintiff and decree for possession thereof was granted. However, the Trial Court dismissed the suit in respect of House No.156. Hence, both the parties therein appealed to the District Court. The learned Addl. District Judge, Solapur, adjudicated both the appeals by common judgment and came to the conclusion that the plaintiff had proved his claim in toto and decreed the suit accordingly. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in the appeal. The only question involved is, whether both the sale deeds under which the plaintiff claim title are proved or not and evidence is clear enough to show that both the sale deeds are proved on record. The only defence of the defendant was to the effect that the sale deed of 1967 was without consideration and, therefore, not binding upon him in respect of the property of House No.156-A. However, there is absolutely no evidence on record to show that the registered sale deed was without consideration. Apart from the statutory presumption with regard to the registered document, there is no evidence available on behalf of the defendant to rebut such presumption. Moreover, it is amply proved that defendant who came after retirement to reside in the village was allowed to reside in the suit property by the plaintiff out of love and affection but the defendant wanted to take disadvantage of this aspect and took steps to enter his own name to the suit property which gives cause of action for the present suit.

5. The learned counsel for the appellant submitted that he had taken plea of adverse possession in the lower

Court and, therefore, he should be allowed to lead evidence in that regard. It was further submitted that, in the Trial Court he had applied for amendment of the written statement but his application was rejected and, therefore, the matter should be remanded. In this regard, it must be noted that the evidence on record is sufficient to establish that the cause of action for the suit arose for the first time in the year 2000 when defendant applied to the concerned authorities to enter his name. Therefore, it is obvious that plea of adverse possession cannot withstand even for a moment. So far as the rejection of the application for amendment of the written statement is concerned, that issue could have been raised at the first appellate Court stage and cannot be entertained at this stage.

6. Therefore, in view of this factual matrix, in my view, there is no substantial question of law involved in the appeal and, as such, the appeal deserves to be dismissed and stands dismissed. Consequently, the Civil Application No. 769 of 2005 also stands dismissed.

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